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No. 81-2252

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1982

HONDA MOTOR COMPANY, LTD.
and AMERICAN HONDA MOTOR
CO., INC.,

Petitioners,

v.

GLEN K. DORSEY, BARBARA DORSEY,
CONTINENTAL CASUALTY CO., and
MISSION INSURANCE COMPANY,

Respondents.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE AND BRIEF AMICUS CURIAE

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Respondents.	:
	:

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE

The Product Liability Advisory Council of the Motor Vehicle Manufacturers Association of the United States, Inc. (hereinafter MVMA), hereby respectfully moves, under Supreme Court Rule 36, for

leave to file the attached brief amicus curiae in this case. The consent of the attorneys for the Petitioners has been obtained. The consent of the attorneys for the Respondents was requested but refused.

Amicus curiae support the petition for certiorari. The aspect of the case of the greatest single concern to it is the ruling by the U.S. Court of Appeals for the Fifth Circuit that the trial judge erred in granting Judgment N.O.V. against the award of punitive damages even though the manufacturer had complied with all relevant federal safety standards.

(a) Statement of Interest of Amicus Curiae

The interest of amicus in this controversy arises from the role of its members as producers of automobiles and defendants in product litigation.

The MVMA is a trade organization, primarily composed of automobile manufacturers. The Product Liability Council is a committee of the MVMA, concerned with questions of tort law reform.

Members of the MVMA build over 99% of all motor vehicles produced in the United States. In addition, MVMA members manufacture such diverse products as farm, industrial, lawn and garden tractors; other agricultural equipment; construction and mining machinery; locomotives and other railroad rolling stock; as well as

winches and gasoline and diesel engines for innumerable industrial and agricultural uses. These products are used and sold throughout the United States. Their manufacturers are subject to extensive federal safety regulations and, also, to tort claims in every jurisdiction, state and federal. Any one of those cases may involve a claim for punitive damages. Moreover, motor vehicle manufacturers historically are a leading target for product liability claims and, therefore, have a particularly vital interest in the resolution of this matter.

This brief offers the Court a somewhat more detailed discussion of the statutory language, legislative history and public policy issues which are involved in the Petitioner's third Question Presented:

May punitive damages be awarded against an automobile manufacturer which has complied with all applicable federal regulations, when those regulations preempt state law and where state law requires proof of wanton disregard of the rights of others for imposition of punitive damages?

It is our hope that a discussion from the viewpoint of the broad class of defendants effected, rather than an individual defendant, will be a useful supplement.

Respectfully submitted,

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CERTIFICATE OF SERVICE

Undersigned counsel for Amicus Curiae Motor Vehicle Manufacturers Association certifies that service of this Motion for Leave to File Brief Amicus Curiae has been made upon counsel for respondents and counsel for petitioners this date, in accordance with law, by depositing three copies thereof in the United States Mail, postage prepaid, to the following:

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No. 81-2252

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October Term, 1982

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Petitioners,	:
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Respondents.	:

ENTRY OF APPEARANCE

PLEASE TAKE NOTE that Aubrey V. Kendall, P.A., a member of the Bar of the Supreme Court of the United States, of the firm of MERSHON, SAWYER, JOHNSTON, DUNWODY & COLE,

hereby enters his appearance in this cause as attorney for Amicus Curiae Motor Vehicle Manufacturers Association of the United States, Inc.

DATES THIS 18th day of June, 1982.

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BRIEF OF AMICUS CURIAE MOTOR VEHICLE MANUFACTURERS ASSOCIATION OF THE UNITED STATES, INC.

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INTRODUCTION AND SUMMARY OF ARGUMENT

Amicus contends that the National Traffic and Motor Vehicle Safety Act of 1966, 15 U.S.C. §§1381, et seq. (henceforth referred to as the Safety Act) means, properly interpreted, that jurors may not impose punitive damages against manufacturers who comply with all applicable federal standards -- even if state law otherwise would permit such awards.

It follows that the Fifth Circuit is in error when it argues (655 F.2d 650 (1981) that general principles of state tort law provide a sufficient basis for punitive damages in this case. Even if the Court's analysis of state law (debatable in itself) were correct, the federal statute would require a different result.

Congress did not say that punitive damages were permissible. True, the draftsmen did not explicitly forbid such awards either. But the full text, particularly the provision for federal preemption, the historical context of the statute and the emphasis in the legislative debates on the need for uniformity in standards for a national industry, call for that conclusion.

The Fifth Circuit erred because it placed excessive weight on §1397(c) which provides that compliance with a federal motor vehicle safety standard does not "exempt any person from any liability under common law". While pertinent, that section should not be interpreted in isolation from Section 1392(d) which prohibits a state from setting a motor vehicle safety standard not identical to the federal standard. To permit jurors to

decide that compliance with specific standards established by a federal agency is not enough even to negate a charge of "wanton disregard for safety" nullifies the latter provision.

Ultimately, the Court may decide that a rule against punitive damages in such circumstances would be appropriate. Instead, it might adopt a rebuttable presumption that one who complies with applicable federal standards is not guilty of "callous disregard of safety". At this juncture, the MVMA suggests only that the case provides an opportunity for a definitive ruling on this important question of federal law.

I. THE MEANING OF THE STATUTE IS A QUESTION OF FEDERAL LAW WHICH REQUIRES CONSIDERATION OF THE ENTIRE TEXT, THE CONGRESSIONAL DEBATES AND THE GENERAL HISTORICAL BACKGROUND OF THE LEGISLATION

(a) Neither section 1397(c) nor anything else in the text of the statute, or its legislative history, says a federal district court must allow a punitive award under these circumstances.

The Fifth Circuit suggested that the general reference to "liability" in 15 U.S.C. §1397(c) means a federal district court judge, considering a motion for Judgment N.O.V. against an award of punitive damages, may not take into account the manufacturer's compliance with federal safety standards. Yet, in ordinary speech and legal terminology alike, "liability" -- the key word -- is not the same thing as "damages". Thus to say compliance does not bar "liability" is

not to say compliance may not be a critical factor in the decision as to what damages are permissible.[1/]

This, we admit, is a purely verbal analysis; but it gains substance from the historical context of the Safety Act. Congress passed the statute in 1966. At that time compensatory damages were the only awards sought in product liability cases for all practical purposes.[2/] The

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1/ "Liability" refers to the cause of action and its elements while "damages" are the measure of recovery. See Black's Law Dictionary (1968), in particular the statement at page 1059 that "liability" is not "synonymous with 'loss' or 'damage'". For cases which recognize that distinction in a variety of contexts, see Ghiardi and Kircher, Punitive Damage Recovery in Products Liability Cases, 65 Marq. L. Rev. 1 (1981), pp. 47-53.

2/ For general historical background, see Owen, Punitive Damages in Product Litigation, 74 Mich. L. Rev. 1257, 1262-63, 1269 (1976). Arguably, over

Footnote Continued

first significant judicial comment on a punitive damage claim against a manufacturer appeared in Roginsky v. Richardson-Merrill, Inc., 378 F.2d 832 (2d Cir. 1967). Judge Friendly did not write that opinion until 1967. Indeed as late as 1970, four years after the passage of the Safety Act, an Annotation complained of the "paucity" of cases discussing punitive damages in product liability matters, 29 A.L.R.3d 1021 (1970).3/

Footnote Continued From Preceding Page

the course of legal history, there were awards in cases involving historical forerunners of product liability. But these were too rare to constitute a significant part of product liability law, Ghiardi and Kircher, supra, at 12. Thus it is improbable that Congress had them in mind.

3/ Even today, in fact, the question is highly controversial. Ghiardi and Kircher, ibid. in passim.

The legislative history makes it still more unlikely that Congress intended, in 1966, to authorize punitive damages by the general reference to "liability."

Nothing was said of punitive damages. Even the references to private litigation in general were scanty and incidental. Senate Report 1301, for instance, commented that:

> "The federal minimum safety standards need not be interpreted as restricting state common law standards of care. Compliance with such standards would thus not necessarily shield any person from product liability at common law."
>
> 1966 U.S. Code Cong. & Admin. News, p. 2720 (emphasis added).

Similarly, during the floor debate, Senator Magnuson mentioned that the Senate

conferees had accepted House language which created Section 1397(c), but he emphasized the limited significance of the provision:

> "... The provision does not prevent any person from introducing in a lawsuit evidence of compliance or non-compliance with federal standards. No court rules of evidence are intended to be altered by this provision."
>
> 1966 Cong. Rec. 20599.

With equal brevity, Senator Cotton commented:

> "... proof of compliance with federal standards may be offered in any proceeding for such relevance and weight as courts may give it."
>
> 1966 Cong. Rec. 20602.

The statutory text and the legislative history,[4/] then, make it clear that the

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4/ The House debates added little except a remark by Congressman Dingell:

Footnote Continued

Safety Act did not outlaw private product liability claims in their entirety. On the other hand, there is no evidence of any intention to deal with specific aspects of those claims as they existed in 1966.

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> ". . . We have preserved every single common law remedy that exists against the manufacturer for the benefit of a motor vehicle purchaser. This means that all of the warranties and all of the other devices of common law which are afforded to the purchaser, remain in the buyer, and they can be exercised against the manufacturer.
>
> 1966 Cong. Rec. 19663.

Note that this was part of a speech opposing criminal penalties. The Congressman said nothing of punitive damages as an "existing" remedy, even though that would have supported his argument that there was no need for criminal penalties.

Nor did Congress say federal regulations could not be given the weight which might seem logical if the body of state law were to change significantly - as it did when claims for punitive damages later came into fashion. Instead, the draftsmen left questions such as the significance of compliance with standards to future resolution by the judiciary in the light of the text and the policies emphasized in the debates.[5/]

5/ This, we point out, is significantly different from leaving the question of the weight of compliance to the jury, as the Fifth Circuit did in this case.

(b) The key statutory language prohibits states from enforcing safety standards different from those set by the federal agency.

If the Circuit Court gave too much weight to Section 1397(c), it gave too little to Section 1392(d) which provides that no state may set a safety standard not identical to the NHTSA standard governing the same aspect of performance. In addition, the Court said nothing of Section 1392(a) which requires that every federal motor vehicle standard be "practicable" and that it be "stated in objective terms". Yet these provisions reflect the emphasis in the legislative history on the necessity for uniformity and predictability. (See 1966 Cong. Rec. 13585).

Although the point has not been discussed often, there is authority that state courts and juries applying state law may not override federal law with impunity, any more than can the state executive or legislature, San Diego Building Trades Council v. Garmon, 359 U.S. 236 (1959) (dicta). Also see, Hoenig, Resolution of "Crashworthiness" Design Claims, 55 St. John's L. Rev. 633 (1981) pp. 707-716; the author concludes that to permit the imposition of punitive damages as a matter of state law would nullify federal preemption and, often, subject manufacturers to conflicting and inconsistent requirements.6/

6/ Compare Gray v. General Motors Corp., 434 F.2d 110 (8th Cir. 1970) in which the plaintiff attacked the manufacturer for not putting a "pop-out" window in the vehicle, with FMVSS 212 which requires that the

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The basic purpose and nature of punitive damages give added force to Hoenig's suggestion. Awards of that nature, by definition, do not "compensate". Instead they are usually rationalized as compelling better engineering practice, Dawson v. Chrysler Corp., 630 F.2d 950 (3d Cir. 1980), cert. denied, 450 U.S. 959 (1981). If that is their function, however, they are an indirect way to set a standard under state tort law which is different from the federal standard - and therefore, not permissible under Section 1392(d).7/

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windshield stay in place in a severe crash. For other instances of inconsistent theories, see Hoenig, supra, at 710-712.

7/ On the other hand, the punitive award may permit jurors to vent moral outrage. Owen, Problems in Assessing

Footnote Continued

II. THE SIGNIFICANCE OF COMPLIANCE REMAINS THE HEART OF THE CASE

The Circuit Court is mistaken when it suggests that compliance with federal standards is not the central issue.

The Court discusses alternative designs advocated by the plaintiff's expert at some length. But those suggestions for different techniques are not, in themselves, proof that the Honda

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Punitive Damages Against Manufacturers of Defective Products, 49 Chi. L. Rev. 1 (1982) at 47. In this it is analogous to a criminal sentence. Certainly the general public must often understand this to be the purpose of highly publicized examples such as the $125,000,000 award in Grimshaw v. Ford Motor Co., 119 Cal.App.3d 757, 174 Cal. Rptr. 348 (1981). Yet each house of Congress, by a large margin, rejected the suggestion that the Safety Act include criminal penalties. 1966 Conc. Rec. 13607; 18808.

designers were guilty of "willful disregard for safety" because they chose a different approach. More important, the Circuit Court opinion does not succeed when it attempts to deal with the Congressional concern that the Safety Act not be interpreted in a way which would outlaw economical, small cars. 1966 Cong. Rec. 18780.

The Court suggests that Honda's designers could have used "metal bones" or heavier metal, or a lengthier hood (655 F.2d at 655). That might have produced a vehicle literally of the same "size" as the actual car. But any such change could have effected the weight, cost and even the basic character of the vehicle.[8/]

8/ Moreover, one scholar has pointed out that the creation of such a "pocket battleship" would not necessarily increase safety. The unusual

Footnote Continued

The Court also suggests (655 F.2d at 650) that a complying manufacturer can be liable because of aspects of the design for which the agency has not issued standards. This, too, fails to take into account the depth and complexity of the practical problems faced by designers and regulators alike. The mere absence of a specific standard does not mean, necessarily, that the National Highway Traffic Safety Administration did not consider the matter. The agency could have decided that other technical standards make an additional regulation superfluous. Or practical constraints,

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rigidity might make it a danger to others in a collision. Hoenig, supra, at 713. Also see, Dawson v. Chrysler, supra.

such as economics, might require the manufacturer to devote limited resources to some other part of the design, so that the proposed requirement could only detract from overall safety. Hoenig, supra, at 712 n. 349.

Further, while the Court's suggestion might be an adequate rationalization for a compensatory award, arguendo, the severe character of punitive damages requires a more substantial basis. If the agency, a third party charged with responsibility for public safety, did not think a particular aspect of the vehicle called for a standard, it is far from self-evident why the manufacturer was guilty of morally outrageous conduct for reaching essentially the same conclusion. These are matters of judgment and priority. Even if the agency was "wrong",

in some sense, that does not mean it was reckless or malevolent -- and the same is true of the manufacturers.[9/]

Thus the significance of compliance and, also, the more general principle of Dreisonstok v. Volkswagenwerk, A.G., 489 F.2d 1066 (4th Cir. 1974) are very much at issue in this case.

9/ Similarly, the fact that there was testimony that a Honda engineer urged the Company to use a different design shows, in itself, no more than a difference of opinion among engineers. Professor Owen, in fact, has pointed to that testimony in this very case to illustrate the danger that juries, carried away with emotion, will impose punitive damage simply because some alternative design approach was possible or was considered and rejected. Owen, Chi. L. Rev., supra, at 17 n.83.

III. SCHOLARS HAVE SUGGESTED A VARIETY OF WAYS TO BALANCE THE NEED FOR UNIFORMITY WITH DEFERENCE FOR STATE LAW

Professor Owen urges that compliance with a regulation or statute "ordinarily should be deemed to be conclusive proof of good faith and hence a conclusive defense to a punitive damage claim". (49 Chi. L. Rev., supra, at 142). Others place greater emphasis on the possibility that an individual standard may be deficient, as was the flammability standard discussed Gryc v. Dayton-Hudson Corp., 927 (Mich. 1979), cert. denied, 449 U.S. 921 (1980). They would let compliance create a presumption of care, to be overcome only by clear cut evidence to the contrary. Epstein, MODERN PRODUCT LIABILITY LAW, 1980, p. 180.

Along the same lines, the need for uniformity and fairness might be reconciled with considerations of federalism by a ruling that compliance is not a defense to a compensatory claim but that it does negate a demand for punitive damages. See Linn v. United Plant Guards Workers, 383 U.S. 53 (1966)(dicta); Hoenig, supra, at 710.

CONCLUSION

For the reasons set forth, amicus urges that certiorari be granted.

Respectfully submitted,

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Dated: June 18, 1982

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